



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT, OPC, MNDL, MNRL, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on February 24, 2020 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord to comply - Section 62;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 5, 2020 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for damages to the unit - Section 67
3. A Monetary Order for unpaid rent or utilities - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirm that the tenancy has not ended and that the main issue is whether or not the tenancy will end pursuant to a one month notice to end tenancy for cause.

The Tenant confirms that its claims for an order for compliance and compensation are in

relation to the Tenant's request that the Landlord formally end the tenancy for landlord's use and to provide the required equivalent of one month rent in compensation.

Rule 2.3 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the main matter is whether the tenancy will end as a result of a notice to end tenancy for cause and as the requests for a different notice to end tenancy with required compensation are not related to the primary matter, I dismiss the Tenant's claims for compliance and compensation with leave to reapply. As the tenancy has not ended the Landlord's claim for damages to the unit is premature and the claim for rent is not related to whether the tenancy will end. I therefore dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Is the Landlord entitled to an order of possession?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started December 1, 2007. Rent is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. The Landlord served the Tenant with a one month notice to end tenancy for cause dated February 15, 2020 (the "Notice"). The reason stated for ending the tenancy is that the Tenant has been repeatedly late paying rent. The details of the Notice set out that the last late rent payment was in January 2020. The Tenant has been paying the rents late throughout the tenancy and the Landlord has not sought to end the tenancy for this reason until February 2020.

The Landlord states that in the fall of 2019 the Landlord wanted to end the tenancy in order for its son to occupy the unit however the Landlord did not serve any notice to end tenancy for landlord's use on the approved RTB form. The Landlord submits that although the Tenant had indicated that it would be prepared to move out of the unit in March 2020, by mid February 2020 the Tenant changed its mind and demanded a formal notice to end tenancy for landlord's use. The Landlord states that it then served the Notice instead of a two month notice to end tenancy for landlord's use.

The Parties do not agree on the amount of rent payable.

Analysis

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. It is undisputed evidence that the Tenant has been repeatedly late paying rent over the length of the 13-year tenancy. There is no evidence that rent was paid late in February 2020. It is also undisputed evidence that the Landlord never acted to end the tenancy for late rent payments until after the Tenant refused to move out of the unit without a formal notice to end tenancy for landlord's use. Given the undisputed facts of repeated late rent throughout the tenancy without any action by the Landlord until the Tenant sought a formal notice to end tenancy for landlord's use, I find on a balance of probabilities that the Landlord waived its reliance on ending the tenancy for unpaid rent. For this reason, I find that the Tenant is entitled to a cancellation of the Notice and I dismiss the Landlord's claims for an order of possession and recovery of the filing fee.

As the Tenant has been successful with its application, I find that the Tenant is entitled to recovery the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Landlord's claim for an order of possession and recovery of the filing fee is dismissed.

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 01, 2020

Residential Tenancy Branch